

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LARRY DOUGLAS,)
) 4:05cv3157
Plaintiff,) MEMORANDUM AND ORDER
vs.)
)
UNION PACIFIC RAILROAD, et al.,)
)
Defendants.)

This matter is before the court on filing no. 23, the Judgment by the Eighth Circuit Court of Appeals dismissing the appeal (filing no. 11) by the prospective intervenor, appellant-Billy Tyler, and assessing the \$255 appellate filing and docketing fees against Mr. Tyler. Because Mr. Tyler is a prisoner subject to the Prison Litigation Reform Act, the Eighth Circuit's Judgment states in pertinent part: "The full \$255.00 appellate filing and docketing fees are assessed against the appellant. The court remands the collection of those fees to the district court."

When, as in this case, the record contains no current trust account information for the appellant, the Eighth Circuit has instructed this court to assess an initial partial filing fee in a reasonable amount based on information available to the court. See Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997): "[F]ailure to file the prison account information will result in the assessment of an initial appellate partial fee of \$35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances."

No recent information is available to the court concerning the appellant's finances. Therefore, the court will require an initial partial appellate filing fee of \$1.00, with the remainder of the fees to be collected in installments in the manner specified by 28 U.S.C. § 1915(b)(2).

THEREFORE, IT IS ORDERED:

1. That the Eighth Circuit Court of Appeals has adjudged the prospective intervenor-appellant, Billy Tyler, liable for the full \$255.00 appellate filing and docketing fees;
2. That, because Mr. Tyler is a prisoner, the fees may not be waived but may be paid in installments pursuant to 28 U.S.C. § 1915(b);
3. That the plaintiff's custodian shall collect from Mr. Tyler's inmate trust account

an initial partial appellate filing fee of \$1.00, and shall remit that amount to the Clerk of Court as funds become available;

4. That, thereafter, all present and future custodians of Mr. Tyler shall collect and remit the balance of the \$255.00 appellate filing fees in the manner required by 28 U.S.C. § 1915(b)(2); and

5. That the Clerk of the Court shall send a copy of this Memorandum and Order to the appropriate financial officer for Mr. Tyler's institution.

September 21, 2005.

BY THE COURT:

/s Richard G. Kopf
United States District Judge